

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

<p>BRIAN FORAKER,</p> <p>Plaintiff,</p> <p>v.</p> <p>MATTHEW VOSHELL, DEBORAH VOSHELL, and CASALE CONSTRUCTION, LLC,</p> <p>Defendants,</p>	<p>C.A. No. N17L-12-054 WCC (Consolidated)</p>
<p>P&C ROOFING, INC.,</p> <p>Plaintiff,</p> <p>v.</p> <p>CASALE CONSTRUCTION, LLC, MATTHEW VOSHELL, and DEBORAH VOSHELL,</p> <p>Defendants,</p>	<p>C.A. No. N18L-03-017 SKR</p>
<p>CASALE CONSTRUCTION, LLC,</p> <p>Plaintiff,</p> <p>v.</p> <p>MATTHEW VOSHELL AND DEBORAH VOSHELL,</p> <p>Defendants/Third-Party Plaintiffs,</p> <p>v.</p> <p>ANTHONY CASALE,</p> <p>Third-Party Defendant.</p>	<p>C.A. No. N18L-04-131 RRC</p>

Submitted: August 1, 2022
Decided: October 27, 2022

ORDER

Chandra J. Williams, Esquire, Rhodunda, Williams & Kondraschow, 1521 Concord Pike, Suite 205, Wilmington, Delaware 19803. Attorney for Defendants/Third-Party Plaintiffs Matthew and Deborah Voshell.

Sean T. O'Kelly, Esquire, O'Kelly & O'Rourke, LLC, 824 N. Market Street, Suite 1001A, Wilmington, Delaware 19801. Attorney for Plaintiff Casale Construction, LLC and Third-Party Defendant Anthony Casale.

CARPENTER, J.

The Court has reviewed the damage submissions filed by the parties after the Court issued its decision on July 1, 2022. The following damage award is made in this matter.

(a) Casale Construction

The Contract price for completion of Matthew and Deborah Voshell's (Voshells) home was \$545,000. According to the bank's review, at the time Casale Construction, LLC (Casale) left the project, the home was 80.35% completed. This percentage reflects that Casale was entitled to \$437,907.50 at the point when the parties ended their relationship.

In addition, throughout the construction period there were change orders submitted and approved by the Voshells. While there is a significant difference among the parties as to what change orders were submitted, approved and completed, they do agree that change orders in the amount of \$52,475.00 were approved. It also appears these change orders were agreed to during the ongoing construction at the home and it is fair and reasonable to conclude they were performed. The Court also finds these were items not contemplated in the original Contract bid and were extras requested by the Voshells and not paid through the bank's draw process. Therefore, the Court concludes that Casale is entitled to be compensated in the amount of \$52,475.00 for the change order requests. However,

the Court finds there is insufficient evidence to support Casale's claim that there was an additional nearly \$46,000.00 in change orders requested by the Voshells and that amount will not be awarded. These change orders are suspect at best and clearly not supported by the evidence.

These findings result in the following damage calculation for Casale:

	\$437,907.50	-	80.35% of Contract
+	<u>\$ 52,475.00</u>	-	Change Orders
	\$490,382.50	-	Total Amount Representing the Work Performed by Casale
-	<u>\$421,988.13</u>	-	Amount Paid to Casale During Construction
	\$ 68,394.37	-	Amount Owed to Casale

(b) The Voshells

There is no dispute that during the construction, and due primarily to the financial difficulties facing Casale, the Voshells purchased building material that was included in the contractual price of the home. The Court finds there is sufficient evidence to find that these purchases total \$127,700.00. The breakdown of these purchases is as follows:

Cabinet deposit	-	\$ 26,500.00
Flooring	-	\$ 12,000.00
Garage Door	-	\$ 5,200.00
Interior Door	-	\$ 7,000.00

Stairs	-	\$ 7,000.00
Windows/Doors	-	<u>\$ 70,000.00</u>
		\$127,700.00

Of this amount, the Voshells retained Draw 13 in the amount of \$25,305.00 and this amount must be subtracted from the \$127,700.00. Therefore, the Voshells are entitled for damages associated with the cost of purchasing these items as follows:

\$127,700.00	-	Total Purchases
- \$ <u>25,305.00</u>	-	Draw 13
\$102,395.00	-	Amount Awarded

As previously mentioned, the home was 80.35% complete when Casale left the site. The Voshells assert they were required to expend \$164,293.25 to finish the home. While the Court finds there is sufficient evidence to support this figure, it must also take into account that the Voshells still had available to them nearly 20% of the funds that they would have paid Casale for completing the home. The remaining 19.65% of the Contract price is \$107,092.50 and this amount would be funds available to finish the home.

As a result, the following is awarded:

\$164,293.25	-	Paid to Complete the Home
- <u>\$107,092.50</u>	-	Balance of the Contract Price Available to Voshells
\$ 57,200.75	-	Additional Funds Needed to Complete the Home

Between correcting construction errors made by Casale and the general cost of completing a partially built home, the Court finds this amount to be fair and reasonable. These are funds the Voshells would not have directly expended if Casale had completed the home. Therefore, the Voshells are entitled to recover these funds.

In conclusion, the damage award to the Voshells based on the above is:

\$102,395.00	-	Material Expenditure
+ \$ 57,200.75	-	Funds Needed to Complete Construction
\$159,595.75		

(c) Fees and Interest

First, the Court notes that counsel for both parties in this matter represented their clients well. They argued all reasonable inferences and conclusions and presented evidence in a professional and fair manner. This Court follows the “American rule” regarding attorneys’ fees, generally requiring each side to bear the cost of those fees and they are not born by the “winning” party. An exception to this rule is allowed when the parties have contractually agreed to an award of attorneys’ fees when litigation is instituted.

The Voshells cite Sections 3.18.1 and 9.10.2 of the American Institute of Architects Document found in GX107 to justify their claims that attorneys’ fees are warranted. The Court finds neither apply. Section 3.18.1 is an indemnification clause to protect the homeowners from liability associated with injuries that occur on the work site. While Section 9.10.2 relates to the discharge cost associated with

resolving third party claims, the Court finds this provision does not cover the cost associated with the dispute between Casale and the Voshells which was litigated before this Court, and there was no evidence presented as to other third party claims. As such, the Court finds that each side will be required to absorb their own attorneys' fees.

Casale also asserts that he is entitled to interest based upon Section 7.2 of the Contract. This provision states that "payments due and unpaid" under the Contract shall bear interest from the date payment is due at the rate stated below or in the absence thereof, at the legal rate prevailing from time to time at the place where the project is located. The Contract referenced a 3% interest figure. The Court finds the payments "due and unpaid" under the Contract at best were the amounts withheld from the bank draws by the Voshells. The Court in its Decision After Trial found the Voshells withheld \$8,741.25 that was due to Casale and not paid. Casale is entitled to interest (at 3%) on this amount and Casale's counsel may present a calculation of this amount to the Court. However, no other interest will be awarded.

Finally, the Court finds no reasonable basis to award the fees associated with the architectural oversight. This service was done at the request of the Voshells and not required under the Contract. While it was a process the Voshells instituted to give them some piece of mind regarding the construction, it is not a contractual obligation. Equally, there is no basis to award bank fees. While these fees were

perhaps caused by the construction delay, they are matters outside of the Contract and the relationship of the parties. As such, they will not be awarded.

(d) Conclusion

Combining the above findings, the Court awards damages to the Voshells in the amount of \$91,201.38.

IT IS SO ORDERED.

/s/ William C. Carpenter, Jr.
Judge William C. Carpenter, Jr.